

PEGASUS ENGINEERS SDN BHD**a****v.****SAMBU (M) SDN BHD**

COURT OF APPEAL, KUALA LUMPUR

b

NH CHAN JCA

ABU MANSOR ALI JCA

HAIDAR MOHD NOOR JCA

[CIVIL APPEAL NO: J-02-816 OF 1996]

15 JULY 1998

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CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - De minimis non curat lex - The law does not concern itself with trifles - Whether appeal was on a trifling matter - Whether appellant should have filed afresh instead of appealing - Whether appeal should be dismissed*

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This was an appeal from the refusal of the judge below to strike out the respondent's indorsement on the writ and the statement of claim under either O. 18 r. 19(1) of the Rules of the High Court 1980 ('the RHC') or the inherent jurisdiction of the court. In its summons which was supported by an affidavit, the appellant had relied on O. 18 r. 19(1)(a), (b), (c) and (d) of the RHC as well as the inherent jurisdiction of the court. Between the grounds (a) and (b) as set out in the summons, the appellant interpolated the words "and/or". The respondent objected to this interpolation on the basis that the use of the conjunction "and" meant that ground (a) of the summons was also being supported by affidavit evidence – in contravention of O. 18 r. 19(2) of the RHC. Both the senior assistant registrar and the judge below upheld the respondent's objection and dismissed the appellant's summons with liberty to file afresh.

e**f****Held:****Per NH Chan JCA****g**

[1] The whole of the instant process of appealing to the Court of Appeal for so trifling a matter came within the ambit of the principle that "the law does not concern itself with trifles" – *de minimis non curat lex*. The appellant could have saved much time and costs by filing his application afresh instead of expending so much money on an unproductive appeal to the instant court.

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[Appeal dismissed with costs.]

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a [Bahasa Malaysia Translation Of Headnotes]

Ini adalah suatu rayuan terhadap keengganan hakim Mahkamah Tinggi untuk membatalkan pengindorsan yang terkandung dalam writ dan pernyataan tuntutan responden, samada di bawah A. 18 k. 19(1) Kaedah-kaedah Mahkamah

b Tinggi 1980 ('KMT 1980') atau melalui bidangkuasa sedia-ada mahkamah. Dalam samannya, yang disertai dengan affidavit, perayu telah bergantung kepada A. 18 k. 19(1)(a), (b), (c), dan (d) KMT 1980, dan bidangkuasa sedia-ada mahkamah. Di antara perkara (a) dan (b) dalam samannya, perayu telah menyisipkan perkataan "and/or". Responden telah mengeluarkan bantahan terhadap sisipan ini atas alasan bahawa kata penghubung "and" membawa makna bahawa perkara (a) dalam saman tersebut juga disokong oleh keterangan affidavit – bertentangan dengan A. 18 k. 19(2) KMT 1980. Kedua-dua penolong kanan pendaftar dan hakim Mahkamah Tinggi telah menyokong bantahan responden, dan telah menolak saman perayu dengan kebebasan untuk memfailkan kesnya semula.

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Diputuskan:
Oleh NH Chan HMR

[1] Segala isu yang dibangkitkan dalam kes ini di mana rayuan telah dibuat ke Mahkamah Rayuan, dianggap sebagai perkara yang remeh temeh. Ianya jatuh di bawah prinsip "the law does not concern itself with trifles" – *de minimis non curat lex*. Perayu mungkin telah dapat menjimatkan kos dan masanya dengan memfailkan kesnya semula. Sebaliknya, perayu telah mengeluarkan wangnya secara sia-sia dengan menghadapkan rayuannya di hadapan mahkamah ini.

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[Rayuan ditolak dengan kos.]

Case referred to:

Re National Assurance and Investment Association, Re Cross [1872] LR 7 Ch 221 (cit)

g **Legislation referred to:**

Rules of the High Court 1980, O. 18 rr. 19(1), (2)

Other source referred to:

Chitty & Jacob's Queen's Bench Forms, 1986, 21st edn, p 233

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For the appellant - Lee Ting Kiat; M/s Andrew Wong & Co
For the respondent - Jagjit Singh; M/s Jagjit Singh & Co

Reported by Gan Peng Chiang

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JUDGMENT

NH Chan JCA:

In the court below, the appellant (the second defendant) applied to have the indorsement on the writ and the statement of claim against the appellant struck out under O. 18 r. 19(1) of the Rules of the High Court 1980 and the inherent jurisdiction of the court. This was refused with liberty to file afresh by the senior assistant registrar who was affirmed by the judge below. Hence, the appeal to this court.

Order 18 r. 19(1) provides:

19(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

In addition, the Court has power under its inherent jurisdiction to strike out any pleading or indorsement which is an abuse of the process of the Court. Where the application is simply on the ground that the pleading discloses no reasonable cause of action or defence, no affidavit evidence is admissible (O. 18 r. 19(2)); otherwise, a summons under this rule is generally supported by an affidavit, especially where, as is generally the case, the summons seeks an order under the inherent jurisdiction of the Court as well as under this rule. (*Chitty & Jacob's Queen's Bench Forms* (1986), 21st Edn. at p. 233)

The appellant in its summons relied on all the grounds under r. 19(1), namely, grounds (a), (b), (c) and (d) as well as an additional ground (e) under the inherent jurisdiction of the court. The summons also declared that it was supported by the affidavit of Chang Fok Chin. Between ground (a) and ground (b) in the summons, the appellant had interpolated the words “and/or”. The respondent took exception to this because of the use of the conjunction “and” between ground (a) and ground (b) in the summons as that would mean that

- a* the supporting affidavit was being used even for ground (a) where no affidavit evidence was admissible (O. 18 r. 19(2)). Both the senior assistant registrar and the judge below upheld the objection and the appellant's summons was struck off with liberty given to the appellant to file afresh. In effect all that the appellant had to do at the time was to file his summons again and by
- b* then he should be wary of using the offending cumulative word "and" between ground (a) and ground (b) in his summons under O. 18 r. 19(1).

- We consider the whole process of appealing to the Court of Appeal for so trifling a matter as the nature of this appeal *de minimis non curat lex* (see *Re National Assurance and Investment Association, Re Cross* [1872] LR 7 Ch. 221). It is unfortunate that the appellant had saddled itself with an unproductive course when another was equally advantageous to it. Instead of wasting time and expending so much money on an appeal to this court, the appellant could have made his application afresh thus saving much time and costs. We think that the *de minimis* principle would apply here. The appeal must be dismissed
- d* with costs.

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